



Dkt # 76

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VIA ELECTRONIC FILING

Hon. Gustave J. DiBianco
 U.S. Magistrate Judge
 United States District Court
 Northern District of New York
 100 South Clinton Street
 Syracuse, NY 13261-7367

Re: *Spero Haritatos v. Hasbro, Inc. and Toy "R" Us (05-CV-930)*

Dear Magistrate DiBianco:

As attorney for Toys "R" Us, I join with Attorney Landsman who has requested a stay of expert discovery pending the disposition of Hasbro's motion to preclude the testimony of Plaintiffs' proffered expert, Siegrun D. Kane, which will be filed by us on behalf of Toys "R" Us later today. Since you already have a copy of Hasbro's motion, I have not included a draft of ours. However, I simply note that the proffered expert testimony which has been characterized by Attorney Landsman as a brief, in our view also looks very much like a jury charge. Be that as it may, the Second Circuit and Judge Hurd have been crystal clear that such testimony is not allowable as it usurps both the Court's province to instruct the jury on the law and the jury's province to apply the law to the facts.

The decision which Judge Hurd will render with respect to the motion, regardless of whether he precludes the Plaintiff's proffered expert or not, will necessarily impact on Toys "R" Us' decision with respect to expert testimony – that is whether or not an expert will be retained, and if so, what the qualifications of that expert shall be. Given the Court's power to stay discovery for good cause shown, we would ask you to consider the Hasbro motion which has been made in the Toys "R" Us motion which is to be made today, as meeting that standard and as a result, stay further discovery with respect to expert testimony until Judge Hurd has rendered his decision.

For whatever consideration you may give this request, we thank you very much.

Respectfully yours,

BOND, SCHOENECK & KING, PLLC

John G. McGowan

cc: Robert E. Purcell, Esq.
 Kim T. Landsman, Esq.

JGM/pak

9/18/06
ORDER

*This request is granted.
 See order of 9/18/06
 endorsed on Dkt No 81.*

*G. J. Brown
 USMT*

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